

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

UNITED STATES OF AMERICA,

v.

**IVAN JAMES,
KAI JAMES,
JOH WILLIAMS,
MALACHI BENJAMIN,
JAHKIEBO JOSEPH, and
ARIEL PETERSEN,**

Defendants.

CASE NO. 19-CR-00079

**UNITED STATES' MOTION TO USE EVIDENCE
DURING OPENING STATEMENT**

COMES NOW the United States of America, by and through Delia L. Smith, United States Attorney for the District of the Virgin Islands, and hereby submits the following.

The United States anticipates incorporating exhibits into its presentation for purposes of its opening statement. The Federal Rules of Evidence and relevant case law establish the admissibility of the business records, public records, and evidence seized from defendants. The United States therefore anticipates no objection to the use of evidence during its opening statement. Courts have approved the use of visual aids in opening statement since "the purpose of the opening argument is to give a broad outline of the case and facts to be proved, a visual outline of a party's argument is not significantly different from an oral outline." *United States v. Fried*, 881 F.2d 1077 (6th Cir. 1989). The visual aids obviously "must avoid reference to matters that cannot be proved or would be inadmissible as evidence." *United States v. De Peri*, 778 F.2d 963, 978-79 (3d Cir. 1985), cert. denied sub nom, *Murphy v. United States*, 475 U.S. 1110 (1986) (the trial court did not abuse its discretion in allowing the United States to use a visual aid in its opening statement).

Here, the United States will confer with defense counsel regarding the use of exhibits in its presentation for purposes of opening statement. Should defense counsel question the admissibility of the exhibits the United States intends to use during its opening statement, the United States will present such evidence to this Court for a pre-trial ruling on admissibility.

Respectfully submitted,

Dated: November 22, 2023

s/ Delia L. Smith
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